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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/655,553	09/02/2003	Thomas D. Anspach	N1065	6698
27320	7590	05/13/2005	EXAMINER	
NORMAN FRIEDLAND 2855 PGA BOULEVARD SUITE 200 PALM BEACH GARDENS, FL 33410			SIRMONS, KEVIN C	
			ART UNIT	PAPER NUMBER
			3763	

DATE MAILED: 05/13/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/655,553	Applicant(s) ANSPACH ET AL.	
	Examiner Kevin C. Sirmons	Art Unit 3763	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 02 March 2005.
- 2a) ☒ This action is FINAL. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-10 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 3-10 is/are allowed.
- 6) ☒ Claim(s) 1 is/are rejected.
- 7) ☒ Claim(s) 2 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 1 is rejected under 35 U.S.C. 103(a) as being unpatentable over Tribble U.S. Pat. No. 3,823,720 in view of Cocanower U.S. Pat. No. 5,334,167.

Tribble discloses a combined suction and direction irrigation apparatus for use in a surgical procedure including an irrigation tubular member (34) having a lumen connected to a source of irrigation fluid (irrigation means not shown) and a suction tubular member (20) having a lumen connected to a suction source (19), said irrigation tubular member being removably supported to said suction tubular member (figs. 2 and 4), and means (26) attached to said irrigation tubular member and said suction tubular member.

Tribble does not disclose a discharge port on the side surface at the distal end of said irrigation tubular member. Cocanower discloses a discharge port (26) on the side surface of the irrigation tubular member. Therefore it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the device of Tribble with the side surface port of Cocanower for improved irrigation.

Allowable Subject Matter

Claims 3-10 are allowable over the prior art of record.

Claim 2 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Response to Amendment

Claim Rejections - 35 USC § 112

Applicant's amendment to claim 2 has overcome the 112 rejection, therefore, the rejection is withdrawn.

Response to Arguments

Applicant's arguments filed 3/2/05 have been fully considered but they are not persuasive.

The Examiner has reconsidered the rejection of claims 1 and 2 as being unpatentable over Tribble in view of Cocanower.

It is respectfully submitted that the interpretation of the claims are clearly not patentable because placing a hole on the side surface of a tube is absolutely unpatentable. When Tribble and Cocanower are combined as suggested by the Examiner, the combination undoubtedly discloses the limitation in claims 1 and 2. Furthermore, it is the examiner's position that the teaching of the references may be far different than the teaching of the present invention, however, applicant has not distinctly

claimed a patentable invention over the prior art of record. Therefore, the claim is not patentable.

Applicant states that Cacanower's feeding tube merely serves to feed nutrients to the patient and is not a device for providing irrigation. However, it is the Examiner's position that an irrigation tube can be used for feeding, as well as, a feeding tube can be used for irrigation. Hence, it is believed that Tribble in view of Cocanower teaches, suggest and provides motivation turn the device to change the direction of the irrigation fluid.

With respect to the analysis of the rejected claims 1 and 2 specifically," means attached to said irrigation tubular member and said suction tubular member for position said discharge port to change the direction of said discharge port for delivery irrigation fluid to a different area in the surgical site" the specification does not have proper antecedent basis for the claimed subject matter (means). Additionally, it is clear that applicant was not attempting to evoke sixth paragraph, means-plus-function language to define the invention because the specification was not written in accordance with 37 CFR .175(d) and MPEP 608.01(o) to explicitly state, with reference to the terms and phrases of the claim element, what structure, materials, and acts perform the function recited in the claim element.

Applicant asked, "why would one expect this structure to have a directional capability"? It is respectfully submitted that any tube within the same technical field specifically class 604 can change direction to irrigate various part of the body.

Art Unit: 3763

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kevin C. Sirmons whose telephone number is 571-272-4965. The examiner can normally be reached on Monday-Friday 6:30-4:00 ALT FRI.

The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Kevin C. Sirmons
Primary Examiner
Art Unit 3763

Kevin C. Sirmons
5/5/05